APPENDIX A

"Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and upon which no issue is given or requested shall be deemed as waived; but where such ground of recovery or of defense consists of more than one issue, if one or more of the issues necessary to sustain such ground of recovery or of defense, and necessarily referable thereto, are submitted to and answered by the jury, and one or more of such issues are omitted, without such request, or objection, and there is evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered make and file written findings on such omitted issue or issues in support of the judgment, but if no written findings are made, such omitted issue or issues shall be deemed as found by the court in such manner as to support the judgment. * * *" (Amended by Order Mar. 31, 1941) (Paragraph 2, Rule 279, Vernon's Texas Rules of Civil Procedure, Franki, page 290.)

APPENDIX B

"Under this rule (279), if a ground of recovery or of defense is wholly ignored or neglected, and no issue is submitted or requested thereon, it will be held to have been waived and no recovery or defense can be based thereon. If, however, the grounds of recovery or of defense consist of more than one element—that is, require more than one issue to submit them—and the court submits some of the elements but omits others, and there is no objection to the failure to submit same, the parties will be placed in the position of having agreed to waive a jury trial on the unsubmitted elements and to have submitted them to the court for his determination." (Lecture before Judicial Section State Bar of Texas, July 3, 1941, by Hon. James P. Alexander, Vernon's Texas Rules of Civil Procedure, Franki, page 296.)

See also *Blaffer* v. *Powers*, 169 S. W. (2d) 536 at 554 (W. E. Ref).